

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

MIGUEL LUTAN  
PLAINTIFF,  
V.S.

Case Number: 1:15-CV-00093-KG-LF

CITY OF ESPAÑOLA, ESPAÑOLA  
POLICE DEPARTMENT, OFFICER DAVID LUGINBUHL  
AND, OFFICER MARTINEZ  
DEFENDANTS,

**FILED**

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

OCT 05 2015

MATTHEW J. DYKMAN  
CLERK

MOTION FOR LEAVE TO ENTER NEWLY  
DISCOVERED EVIDENCE:

Dear Judge: K.J. Gonzales,

Your honor I have no more legal assistance to help me with my case at this prison. Therefore, I am doing the best I can to litigate my case. I have complained in my Lawsuit that Española Police department officers applied excessive force, especially over Taser during my arrest. Due to that I was almost killed.

There is no doubt that the officer David Luginbuhl was the guilty party. He abused his authority by passing the limits and for no reason of security he overtaxed me while I was already handcuffed. Your honor I am sending a copy of Española Newspaper article completely covers the inappropriate or to say a "Bad Police behaviour" evidence of officer David the main police officer who almost killed me.

I would like the court to take the information

in the article into consideration when weighing the facts to find Española Police department liable for my injuries. The evidence also could prove Deliberate indifference because the Española Police department hired officer David knowing that he has prior bad acts.

Therefore, please accept this newly discovered evidence into the record.

Respectfully Submitted  
Miguel Reyes  
Signature  
on 9-29-15

DECLARATION UNDER PENALTY OF PERJURY  
The undersigned declares under penalty of perjury that he is the Plaintiff in the Above Action that he has read the above Complaint and that the information contained therein is true and correct

28 U.S.C. Sec 1746 18 U.S.C. Sec. 1621. Executed at GCMF (Location)

### CERTIFICATE OF SERVICE

I hereby certify that on the 9.29.15 I sent the motion for leave to enter newly discovered evidence and mailed a copy by U.S. MAIL to: MARK A. BASHAM

Basham and Basham P.C.,  
2205 Miguel Chavez Road, Suite A  
Santa Fe New Mexico 87505  
x Miguel Reyes  
46946

# Complaints

# Detail Officer's 'Pranks'

By Wheeler Cowperthwaite

SUN Staff Writer

Complaints filed by two Española Police Department employees show former officer David Luginbuhl was fired for pulling two locker room-style pranks in the Department's holding area.

Uncertified Officer Cory Atencio and jail guard German Jacquez-Torres both filed complaints against Luginbuhl the same day he allegedly shot them with plastic pellets while in the holding area at the Police Department, July 7.

City officials fired Luginbuhl July 24, 17 days after his two co-workers filed the complaints against him.

Both complained of the pain and injury they suffered from being shot with the plastic pellets, normally used during shooting games similar to paintball.

The gun used to fire the pellets, called an Airsoft gun, looked indistinguishable from an actual pistol and Jacquez-Torres didn't know it wasn't real when Luginbuhl allegedly approached him, he wrote.

"Officer Luginbuhl then showed me what looked like a bullet and stated to me while placing the bullet inside the pistol while spinning it 'Let (sic) Play Russian Rullet (sic),' " Jacquez-Torres wrote. "I had no idea what he was planning to do at that time and pointed the pistol at me. I yelled at him 'What are you doing?' Officer Luginbuhl pulled the trigger about five times."

As Jacquez-Torres tried to walk away, Luginbuhl allegedly kept shooting, then laughed and said there were no more pellets, seemingly a lie.

"Officer Luginbuhl shot once more hitting me in the back causing a welt, and did break skin which scared me because I had no idea on



(SUN/Photo by Wheeler Cowperthwaite)

**Former officer David Luginbuhl looks up** a tactical ladder in December 2013. Two of his co-workers alleged he shot them with an Airsoft gun repeatedly after telling them he wanted to play Russian Roulette. He was fired July 24 and State Police are now investigating the incident.

what (sic) type of weapon he was shooting at me," he wrote. "Officer Luginbuhl laughed at me and walked away."

He then allegedly did the same routine to Atencio, when Atencio walked into the detention area to pick up Jacquez-Torres, hitting Atencio in the back of the leg with the plastic pellet, Jacquez-Torres wrote.

He allegedly came back moments later with what appeared to be a can of pepper spray.

"Officer Luginbuhl (sic) was laughing as he stated to Officer Atencio 'Let's certify you!'" Jacquez-Torres wrote. "(Luginbuhl) then sprayed Officer Atencio in the face. It ended up being water."

Atencio's account of the alleged attack differs somewhat with Jacquez-Torres's. In Atencio's retelling, after Luginbuhl shot him in the back of the leg, Luginbuhl fired a pistol that produced smoke throughout the building and he proceeded to walk through the room, trying to fan away the smoke so it did not trigger the fire alarms.

Atencio does not mention being sprayed in the face with water and Jacquez-Torres does not mention the smoke-producing pistol.

City Manager Kelly Duran released the complaints Aug. 17, after the documents were originally requested, July 29.

In an email, Duran originally wrote that the complaints were a "personnel matter" before city attorney Frank Coppler confirmed the complaints, whether by officers or citizens, are public records.

An Inspection of Public Records Act request to view Luginbuhl's personnel file has been pending with the city since July 22.

Human Resources Director Sally Baxter has not responded to emails requesting an update on the status of the request.

Luginbuhl came to the Española Police Department after he had been an officer in Gallup. While there, he was charged with extortion, attempt to commit an unspecified fourth-degree felony, assault against a household member, criminal damage to property and criminal trespass, according to online court records.

All of the charges except extortion were dropped due to a failure to prosecute and the extortion charge was dismissed by the prosecutor, according to online court records.

EXHIBIT TO CASE NUMBER -  
Lujan v City of Espanola

1:15-CV-00093-KG-LF

9-20-15 Rio Grande Sun

Guadalupe County Correctional Facility

Name: Miguel Lujan  
Post Office Box 520  
Santa Rosa, New Mexico 88435

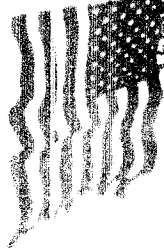
NMCD#

669116

Unit

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OCT 05 2015

MATTHEW J. DYKMAN  
CLERK

LEGAL MAIL

LEGAL

U.S. District Court  
District of New Mexico

Office of the Clerk

Suite 270

33310th St. N.W. Albuquerque, NM

87102227470

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